

COPY

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK GUYTAN FRIAS,
Petitioner-Appellant,

v.

No. 20849 ✓

LAWRENCE E. WILSON, Warden,
California State Prison,
San Quentin, California,
Respondent-Appellee.

BRIEF OF APPELLEE

THOMAS C. LYNCH, Attorney General
of the State of California

ROBERT R. GRANUCCI,
Deputy Attorney General

HORACE WHEATLEY,
Deputy Attorney General

6000 State Building
San Francisco, California
Telephone: 557-2848

Attorneys for Appellee

FILED

JUN 27 1966

WM. B. LUCK, CLERK

10V 4 1966

1 TOPICAL INDEX

2 Page

3 JURISDICTION

1

4 STATEMENT OF THE CASE

1

5 SUMMARY OF APPELLEE'S ARGUMENT

3

6 ARGUMENT

7 APPELLANT'S CASE DOES NOT FALL WITHIN THE
8 PURVIEW OF ESCOBEDO v. ILLINOIS, 378 U.S.
478 (1964)

3

9 CONCLUSION

4

10
11 TABLE OF CASES

12 Escobedo v. Illinois,
13 378 U.S. 478 (1964)

2, 3, 4

14 Johnson v. New Jersey,
34 U.S.L. Week 4592 (U.S. June 20, 1966)

4

1 IN THE UNITED STATES COURT OF APPEALS

2 FOR THE NINTH CIRCUIT

3
4 FRANK GUYTAN FRIAS,)

5 Petitioner-Appellant,)

6 v.)

No. 20849

7 LAWRENCE E. WILSON, Warden,)

California State Prison,)

8 San Quentin, California,)

9 Respondent-Appellee.)

10
11 BRIEF OF APPELLEE

12 JURISDICTION

13 The jurisdiction of the United States District

14 Court to entertain appellant's petition for a writ of

15 habeas corpus was conferred by Title 28, United States

16 Code, section 2253, which makes a final order in a habeas

17 corpus proceeding reviewable in the Court of Appeals when

18 a certificate of probable cause has issued.

19 STATEMENT OF THE CASE

20 A. Proceedings in the state courts.

21 Appellant, Frank Guytan Frias, was convicted of

22 violating section 11501 of the Health and Safety Code, to

23 wit: furnishing a narcotic (heroin), after a trial by jury

24 during which he was represented by counsel (CT 5-10).^{1/}

25
26 1. As hereinafter used, "CT" refers to the transcript of
record filed in this Court, constituting the United States
District Court Clerk's record on appeal.

1 On March 29, 1963, appellant was sentenced to state prison
2 for the term prescribed by law (CT 12).

3 Appellant filed notice of appeal from the judgment
4 of conviction on April 8, 1963 (CT 13), and on July 28, 1964,
5 the District Court of Appeal of the State of California
6 affirmed appellant's conviction.^{2/} Appellant petitioned the
7 Supreme Court of the State of California for a writ of habeas
8 corpus on August 4, 1965 (CT 14-22), said writ being denied
9 by that court on August 25, 1965 (CT 24). Substantially the
10 same factual and legal issue of allegedly illegal interrogation
11 presented to the District Court was raised in the petition
12 for writ of habeas corpus in the California Supreme Court,
13 though this issue was not raised in appellant's appeal to
14 the District Court of Appeal of the State of California.

15 B. Proceedings in the federal courts.

16 On January 31, 1966, appellant filed an application
17 for writ of habeas corpus in the United States District Court
18 for the Northern District of California, Southern Division
19 (CT 1-13). On January 28, 1966, the District Court dismissed
20 the petition for a writ of habeas corpus filed by petitioner
21 on the grounds that the decision of the Supreme Court in
22 Escobedo v. Illinois, 378 U.S. 478 (1964), did not apply
23 retroactively to affect petitioner's conviction which was
24

25 2. A copy of the opinion of the District Court of Appeal
26 will be lodged with this Court for its consideration on the
date set for hearing this matter.

1 final prior to the Escobedo decision, and that petitioner's
2 allegations were therefore devoid of merit (CT 35, 36).
3 However, on February 25, 1966, the court, pursuant to Title
4 28, United States Code, section 2253, certified that there
5 was probable cause for petitioner to appeal from the court's
6 order dismissing the petition for writ of habeas corpus, and
7 the court also granted petitioner's motion for leave to
8 appeal in forma pauperis, pursuant to Title 28, United States
9 Code, section 1915 (CT 48).

10 SUMMARY OF APPELLEE'S ARGUMENT

11 Appellant's case does not fall within the purview
12 of Escobedo v. Illinois, 378 U.S. 478 (1964).

13 ARGUMENT

14 Appellant does not argue that his statement, "I am
15 damn sorry I ever sold you heroin . . . ," was other than
16 voluntary. Rather appellant asserts that since he was "the
17 direct object of a police investigation," he was entitled to
18 be admonished of his constitutional right against self-
19 incrimination (AOB 7).

20 Appellant has not alleged that he was in custody,
21 that the police were carrying out a process of interrogations
22 designed to elicit incriminating statements when he made
23 the questioned statement, and that he had requested and
24 been denied an opportunity to consult with counsel so as to
25 bring him within the protection of Escobedo. And even had
26 appellant made allegations identical to those made in

1 Escobedo, since appellant's trial was completed prior to
2 June 22, 1964, the date on which Escobedo was decided,
3 the exclusionary rule of Escobedo has no application to
4 appellant's case. Johnson v. New Jersey, 34 U.S.L. Week
5 4592 (U.S. June 20, 1966).

6 CONCLUSION

7 For the foregoing reasons, it is respectfully
8 submitted that the order of the District Court denying
9 appellant's petition for writ of habeas corpus be affirmed.

10 Dated: June 27, 1966.

11 THOMAS C. LYNCH, Attorney General
12 of the State of California

13 ROBERT R. GRANUCCI,
14 Deputy Attorney General

15 HORACE WHEATLEY,
16 Deputy Attorney General

17 Attorneys for Respondent-Appellee
18
19

20 mhm
CR-SF
21 66-286

CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit and that in my opinion this brief is in full compliance with these rules.

Dated: San Francisco, California.

June 27, 1966

HORACE WHEATLEY
Deputy Attorney General
of the State of California

